

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
)	
P & CK CONSTRUCTION)	
)	
)	
)	
RESPONDENT)	CASE NO. WPC07-0236

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the "director" and the "division" respectively) by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "commissioner" and the "department" respectively).

II.

P & CK Construction, (hereinafter the "Respondent") is the owner of a residential development located on Remagen Lane in Knox County, Tennessee (hereinafter the "site"). Service of process may be made on the Respondent through Carley Keck, Registered Agent, at P.O. Box 67, Seymour, Tennessee, 37856.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (hereinafter the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (hereinafter the “Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a “person” as defined by T.C.A. §69-3-103(20) and, as hereinafter stated, the Respondent has violated the Act.

V.

Stock Creek and its unnamed tributaries are referred to herein, as “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. In accordance with Department Rule 1200-4-4, “Use Classifications for Surface Waters,” Stock Creek and its unnamed tributaries and unnamed wetlands have been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

VI.

Tennessee Code Annotated §69-3-108 requires a person to obtain coverage under a permit prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substances will move into waters of the state. Coverage under the Tennessee Construction General Permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI), site-specific Storm Water Pollution Prevention Plan (SWPPP), and appropriate fee.

FACTS

VII.

On October 16, 2006, the Respondent submitted a NOI, SWPPP, and an appropriate fee to obtain coverage under the TNCGP. On January 9, 2007, the division issued the Respondent coverage under the TNCGP. The coverage became effective on

January 9, 2007, and expires upon the division's receipt of a Notice of Termination or upon the expiration of the general permit on May 30, 2010. The permit authorizes the Respondent to discharge storm water runoff associated with construction activity to Stock Creek, in accordance with the TNCGP terms and conditions.

VIII.

On August 23, 2007, division personnel conducted a compliance visit at the site and observed that sediment had migrated off site into jurisdictional waters causing a condition of pollution. In addition, division personnel noted that Erosion Prevention and Sediment Control measures (EPSC) were not in accordance with the SWPPP, the Notice of Coverage (NOC) was not posted on the site, and the Respondent failed to maintain a vegetative buffer zone for the unnamed tributary of Stock Creek.

IX.

On August 31, 2007, the division issued a Notice of Violation (NOV) to the Respondent for violations observed during the August 23, 2007, site inspection. The NOV required the Respondent to update the SWPPP and to develop and implement a Corrective Action Plan (CAP) in order to mitigate the pollution caused by construction activities at the site. The NOV required that the Knoxville Environmental Field Office (K-EFO) review and approve the plan before any remediation work began. The NOV also required the Respondent to stabilize the stream-side buffer zone, update the ESPC measures to correspond with the current SWPPP, post the NOC and SWPPP at the site entrance, store oil and paint containers indoors to comply with the TNCGP, and

implement vegetative controls for soil stabilization. The NOV required the Respondent to respond in writing within 14 days of receipt of the NOV.

X.

To date the division has yet to receive a reply from the Respondent regarding the August 31, 2007, NOV.

XI.

On October 1, 2007, division personnel conducted a compliance investigation at the site and observed EPSC measures not in accordance with the SWPPP. In addition, the Notice of Coverage (NOC) was not posted on the site, and sediment was allowed to leave the site causing a condition of pollution.

XII.

VIOLATIONS

By failing to comply with the terms and conditions of the TNCGP as described herein, the Respondent has violated T.C.A. §§69-3-108(b), 114(b), which state in part:

T.C.A. §69-3-108(b):

(b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;

- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

T.C.A. §69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

XIII.

By discharging sediment into waters of the state that resulted in a condition of pollution, the Respondent has violated T.C.A. §§69-3-114(a), referenced below, and 69-3-114(b), as referenced above.

T.C.A. §69-3-114(a):

It shall be unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

XIV.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-107, 69-3-109, 69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENT to the Respondent:

1. The Respondent shall implement appropriate EPSC measures to ensure that no eroded material leaves the site and enters waters of the state. Documentation, including photographic evidence, that EPSC measures have been implemented, is to be sent within FIFTEEN (15) DAYS of receipt of this Order and Assessment to the manager of the Division of Water Pollution Control located at the K-EFO at 1221 3711 Middlebrook Pike, Knoxville, Tennessee, 37921.
2. The Respondent shall, within FIFTEEN (15) days of receipt of this Order, submit an updated SWPPP for review and approval to the Water Pollution Control manager at the K-EFO at the address above.
3. The Respondent shall, within THIRTY (30) DAYS of receipt of this Order and Assessment, submit for division approval a Corrective Action Plan (CAP) for the impacted portions of Coleman Branch. The plan shall include the specific methods proposed to remove the sediment from Coleman Branch. The plan shall be submitted to the manager of the division's K-EFO.
4. The Respondent shall, within THIRTY (30) DAYS of division approval, complete the activities outlined in the approved corrective action plan and send written notification to the manager of the division's K-EFO upon completion.

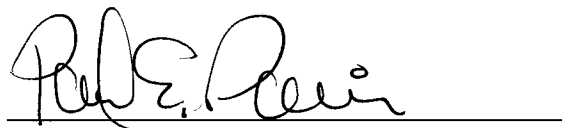
5. The Respondent shall maintain professionally designed EPSC measures until final site stabilization.
6. The Respondent is hereby assessed a CIVIL PENALTY in the amount of THIRTY NINE THOUSAND DOLLARS (\$39,000.00), payable as follows:
 - a. The Respondent shall pay TEN THOUSAND DOLLARS (\$10,000.00) to the division within THIRTY (30) DAYS of receipt of this Order.
 - b. The Respondent shall pay EIGHT THOUSAND DOLLARS (\$8,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 1 above in a timely manner.
 - c. The Respondent shall pay EIGHT THOUSAND DOLLARS (\$8,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 2 above in a timely manner.
 - d. The Respondent shall pay SIX THOUSAND DOLLARS (\$6,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 3 above in a timely manner.
 - e. The Respondent shall pay FOUR THOUSAND DOLLARS (\$4,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 4 above in a timely manner.
 - f. The Respondent shall pay THREE THOUSAND DOLLARS (\$3,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 5 above in a timely manner.
7. The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received a minimum of THIRY (30) DAYS in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

Further, the Respondent is advised that the foregoing Order is in no way to be construed as a waiver, expressed or implied, of any provision of law or regulations. However, compliance with the Order will be one factor considered in any decision whether to take enforcement action against the Respondent in the future. The director may, for good cause shown by the Respondent, extend for a fixed time period, the compliance dates contained within this Order.

The director will reply to the Respondent's request in writing. Should the Respondent fail to meet the requirement by the extended date, any associated CIVIL PENALTY shall become due THIRTY (30) DAYS thereafter.

Issued by the Director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 3rd day of December, 2007.

A handwritten signature in black ink, appearing to read "Paul E. Davis", is written over a horizontal line.

Paul E. Davis, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel (OGC) a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within THIRTY (30) DAYS of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible

for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payments of the civil penalty shall be made payable to the “Treasurer, State of Tennessee,” and sent to the Division of Fiscal Services-Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, at 6th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. Please write your case number on all payments and all correspondence concerning this matter.